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*Attorneys for Plaintiff Blendtec Inc.*

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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**BLENDTEC INC.**, a Utah corporation,  
Plaintiff,

vs.

**BLENDJET, INC.**, a Delaware corporation,  
Defendant.

**DECLARATION OF MICHAEL  
MONSON IN SUPPORT OF  
PLAINTIFF BLENDTEC INC.’S  
MOTION TO QUASH SUBPOENAS  
TO OUTSIDE COUNSEL**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell  
Magistrate Judge Dustin B. Pead

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I MICHAEL MONSON declare as follows:

1. I am General Counsel at Plaintiff Blendtec Inc. (“Blendtec”) in the above captioned action. I submit this declaration in support of Blendtec’s motion to quash two subpoenas that Blendjet served on Blendtec’s current and former outside counsel, Dorsey & Whitney LLP and Holland & Hart LLP, respectively (the “Outside Counsel Subpoenas”) in this action. I am fully

familiar with the facts set forth in this declaration from personal knowledge or from documents that I have reviewed. If called as a witness, I could and would testify competently under oath to the facts contained herein.

2. Over the past several years, Blendtec has had an attorney-client relationship first with Holland & Hart LLP, a law firm located in Salt Lake City, Utah, and then with Dorsey & Whitney LLP, also a law firm located in Salt Lake City. The transition from Holland & Hart to Dorsey & Whitney occurred in early 2018 when the Holland & Hart attorneys that primarily handled Blendtec's legal affairs moved from Holland & Hart to Dorsey & Whitney. In early 2018, when that transition occurred, I requested that Holland & Hart transfer all Blendtec files within its possession to Dorsey & Whitney. As such, Holland & Hart should not have any Blendtec documents responsive to the subpoena.

3. Through the course of its relationships with Holland & Hart and with Dorsey & Whitney, Blendtec has sought and received legal advice from its attorneys at those respective law firms. At all times Blendtec considered those communications and the documents related thereto to be protected by the attorney-client privilege, the work product privilege, and/or other applicable privileges and immunities. Blendtec is unaware of any communications between itself and its outside counsel for purposes of providing legal advice that would not be covered by the attorney-client privilege.

4. I understand and am aware that Blendjet has served document subpoenas on Blendtec's former and current counsel. I have reviewed those document subpoenas, which are identical.

5. Based on my review of the documents requested in the Outside Counsel Subpoenas, I have determined that the vast majority of the documents requested by Blendjet are privileged. Specifically, as set forth below, to the extent that Blendtec's outside counsel has any documents responsive to Request Nos. 1-2 and 6-19 in the Outside Counsel Subpoenas, I believe that each of those documents would be covered by the attorney-client privilege. On November 17, 2022, Blendtec produced a privilege log to Blendjet that includes a log of the privileged communications that exist between Blendtec and its outside counsel.

Request No.	Documents Requested	Basis of Privilege
1.	All documents related to the evaluation, availability, and selection of the Blendtec Marks.	Any documents and communications between Blendtec and its outside counsel related to the evaluation, availability, and selection of the Blendtec Marks would be in connection with Blendtec seeking and obtaining legal advice related to those marks. As such, these documents are privileged. On November 17, 2022, Blendtec produced a privilege log to Blendjet that included documents responsive to this request. <i>See, e.g.</i> , Exhibit C to Blendtec's Motion to Quash the Outside Counsel Subpoenas at Nos. 5-6.
2.	All documents that relate to Blendtec's applications for federal registration of the Blendtec Marks, and to the subsequent examination and registration of the Blendtec Marks	Any documents and communications between Blendtec and its outside counsel related to the applications to register, the examination, and the registration of the Blendtec Marks would be in connection with Blendtec seeking and obtaining legal advice related to those marks. As such, these documents are privileged. On November 17, 2022, Blendtec produced a privilege log to Blendjet that included documents responsive to this request. <i>See, e.g.</i> , Exhibit C to Blendtec's Motion to Quash the Outside Counsel Subpoenas at Nos. 7-29. I understand that Blendtec has already produced the actual USPTO

		prosecution files and there is therefore no reason to request them through third party subpoenas.
3.	Any and all Searches or monitoring reports generated or commissioned in connection with the Blendtec Marks, including the results thereof.	I understand that any actual search reports related to the Blendtec Marks are not privileged, and would be in the possession, custody, or control of Blendtec such that Blendjet can obtain those documents from Blendtec through a request for production of documents. In fact, Blendtec produced a search report from 1999 related to the “Blendtec” mark.
4.	Any and all Searches or monitoring reports generated or commissioned by or on behalf of Blendtec that include the term “BLEND,” including the results thereof.	I understand that any actual search reports related to the Blendtec Marks are not privileged, and would be in the possession, custody, or control of Blendtec such that Blendjet can obtain those documents from Blendtec through a request for production of documents. In fact, Blendtec produced a search report from 1999 related to the “Blendtec” mark.
5.	Any and all Searches or monitoring reports generated or commissioned by or on behalf of Blendtec that relate to a “swirl” design feature, including the results thereof.	I understand that any actual search reports related to the Blendtec Marks are not privileged, and would be in the possession, custody, or control of Blendtec such that Blendjet can obtain those documents from Blendtec through a request for production of documents. In fact, Blendtec produced a search report from 1999 related to the “Blendtec” mark.
6.	All documents related to Blendtec’s policies, guidelines, and/or procedures employed or practiced (or that ought to be employed or practiced) in the selection, maintenance, registration, and protection of its trademarks.	Any documents and communications between Blendtec and its outside counsel related to any Blendtec guidelines, policies, and procedures related to its trademarks would be in connection with Blendtec seeking and obtaining legal advice related to Blendtec’s marks and policies. As such, any such documents are privileged. On November 17, 2022, Blendtec produced a privilege log to Blendjet that included documents responsive to this request. <i>See, e.g.</i> , Exhibit C to Blendtec’s Motion to Quash the Outside Counsel Subpoenas at Nos. 5-6.

7.	All documents that comprise or refer to surveys, focus groups, or market studies, or any other type of assessment that either D&W or Blendtec has conducted – or that any other third party has conducted on either of their behalf – in connection with the Blendtec Marks and/or the Blendtec Products.	Any documents and communications between Blendtec and its outside counsel related to any surveys, focus groups, or market studies would be in connection with Blendtec seeking and obtaining legal advice related to Blendtec's marks and policies. As such, any such documents are privileged.
8.	All documents evidencing or related to any effort to police, enforce, and/or defend the Blendtec Marks, including but not limited to any and all cease and desist letters that Blendtec has sent or received in relation to the Blendtec Marks.	Any documents and communications between Blendtec and its outside counsel related to any efforts to police, enforce, or defend the Blendtec marks would be in connection with Blendtec seeking and obtaining legal advice related to Blendtec's marks and policies. As such, any such documents are privileged. On November 17, 2022, Blendtec produced a privilege log to Blendjet that included documents responsive to this request. <i>See, e.g.</i> , Exhibit C to Blendtec's Motion to Quash the Outside Counsel Subpoenas at Nos. 86-93. Further, as Blendjet knows, any responsive cease and desist letters would be within Blendtec's possession, custody, or control and Blendjet can request such documents through party discovery. Indeed, Blendtec produced the cease and desist letter that Blendtec's counsel sent to Blendjet in this action.
9.	All documents evidencing or relating to any disputes that Blendtec has had with any third parties that relate to or reference the Blendtec Marks.	Any documents and communications between Blendtec and its outside counsel related to disputes that Blendtec has had related to the Blendtec marks would be in connection with Blendtec seeking and obtaining legal advice related to Blendtec's marks and policies. As such, any such documents are privileged. On November 17, 2022, Blendtec produced a privilege log to Blendjet that included documents responsive to this request. <i>See, e.g.</i> , Exhibit C to Blendtec's Motion to Quash the Outside Counsel Subpoenas at Nos. 86-93.
10.	Documents sufficient to identify all Blendtec employees or agents who corresponded with D&W regarding the conception,	Any documents and communications between Blendtec and its outside counsel related to the conception, development,

	<p>development, selection, consideration, investigation, searching, evaluation of availability, application, registration, maintenance, and/or enforcement of any actual or potential trademark or service mark for Blendtec.</p>	<p>selection, consideration, investigation, searching, evaluation of availability, application, registration, maintenance, and/or enforcement of any actual or potential trademarks for Blendtec would be in connection with Blendtec seeking and obtaining legal advice related to Blendtec's marks and policies. As such, any such documents are privileged. On November 17, 2022, Blendtec produced a privilege log to Blendjet that included Author and Recipient information sufficient to identify the Blendtec employees who corresponded with D&amp;W on these matters. <i>See, e.g.</i>, Exhibit C to Blendtec's Motion to Quash the Outside Counsel Subpoenas.</p>
11.	<p>All documents related to any relationship, agreements, or joint venture between Blendtec and any other entity with a corporate name or registered trademark that includes the word "blend," including but not limited to Blendfresh and Blendid.</p>	<p>Any documents and communications between Blendtec and its outside counsel related to any relationship, agreements, or joint venture between Blendtec and any other "blend"-formative entity would be in connection with Blendtec seeking and obtaining legal advice. As such, any such documents are privileged. Any non-privileged documents responsive to this request would be in the possession, custody, or control of Blendtec and Blendjet should request that information through party discovery. Indeed, as Blendjet knows, Blendtec has already produced to Blendjet non-privileged agreements between itself and Blendfresh and Blendid.</p>
12.	<p>All Documents evidencing or relating to any assignments, licenses, or other agreements of any type entered into by Blendtec that relate to or reference the Blendtec Marks.</p>	<p>Any documents and communications between Blendtec and its outside counsel related to assignments, licenses, or other agreements related to the Blendtec Marks would be in connection with Blendtec seeking and obtaining legal advice related to Blendtec's marks and policies. As such, any such documents are privileged. Any non-privileged documents responsive to this request would be within the possession, custody, or control of Blendtec and Blendjet should proceed via party discovery. Indeed,</p>

		as Blendjet knows, Blendtec has already produced to Blendjet a non-privileged document responsive to this request.
13.	All documents related to the evaluation, availability, and selection of the Blendfresh Mark.	This request does not pertain to Blendtec, as Blendtec does not own the Blendfresh mark.
14.	Any and all Searches or monitoring reports generated or commissioned in connection with the Blendfresh Mark, including the results thereof.	This request does not pertain to Blendtec, as Blendtec does not own the Blendfresh mark.
15.	All documents that relate to the application for federal registration of the Blendfresh Mark, and to the subsequent examination and registration of the Blendfresh Mark.	This request does not pertain to Blendtec, as Blendtec does not own the Blendfresh mark.
16.	All documents that relate to, refer to, or discuss BlendJet, including, but not limited to, its brand, customers, marketing and/or advertising strategies, competitors, the BlendJet Marks, and/or the BlendJet Products.	Any documents and communications between Blendtec and its outside counsel related to Blendjet would be in connection with Blendtec seeking and obtaining legal advice related to the dispute between Blendtec and Blendjet. As such, any such documents are privileged. On November 17, 2022, Blendtec produced a privilege log to Blendjet that included privileged documents responsive to this request. See, e.g., Exhibit C to Blendtec's Motion to Quash the Outside Counsel Subpoenas at Nos. 86-93.
17.	All documents reflecting any communication or discussion between Blendtec and any third party related to or concerning the Current Litigation.	To the extent that Blendtec's outside counsel has any documents reflecting any communication between Blendtec and third parties they would be in connection with Blendtec seeking and obtaining legal advice related to the dispute between Blendtec and Blendjet. As such, any such documents are privileged. Any non-privileged documents regarding communications between Blendtec and third parties regarding the Current Litigation are in Blendtec's possession, custody, or control, and Blendjet should proceed by way of party discovery rather than by sending a subpoena to Blendtec's outside counsel.
18.	All documents comprising or otherwise containing any factual background or analysis	Any documents and communications between Blendtec and its outside counsel

	of any factual material related to the BlendJet Marks and/or BlendJet Products.	comprising or containing any factual background or analysis related to Blendjet would be in connection with Blendtec seeking and obtaining legal advice related to the dispute between Blendtec and Blendjet. As such, any such documents are privileged. On November 17, 2022, Blendtec produced a privilege log to Blendjet that included privileged documents responsive to this request. <i>See, e.g.</i> , Exhibit C to Blendtec's Motion to Quash the Outside Counsel Subpoenas at Nos. 86-93. Any non-privileged documents related to factual material regarding Blendjet are in Blendtec's possession, custody, or control, and Blendjet should proceed by way of party discovery rather than by sending a subpoena to Blendtec's outside counsel. Indeed, as Blendjet knows, Blendtec has already produced many documents related to factual material regarding Blendjet, including consumer calls, among other things.
19.	Any cover letter, transfer memo, or similar transition document that accompanied any documents responsive to any of the foregoing Requests when they were transferred into D&W's possession, custody, or control.	I understand that Holland & Hart is producing in response to the subpoena it received non-privileged transfer letters from itself to Dorsey & Whitney. Any other documents and communications between Blendtec and its outside counsel responsive to this request are privileged. On November 17, 2022, Blendtec produced a privilege log to Blendjet that reflect communications covered the by attorney-client privilege.

6. For these reasons, I believe that the Outside Counsel Subpoenas are improper and should be quashed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED this 9th day of December, 2022.

  
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Michael Monson

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of December, 2022, a true and correct copy of the foregoing document was filed with the Court's CM/ECF system and served on the following counsel of record via the CM/ECF notification system:

Patrick M. McGill: [pmcgill@sheppardmullin.com](mailto:pmcgill@sheppardmullin.com)  
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*/s/ Tamara L. Kapaloski*